IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 21983 of 2007(P)

AGAINST THE ORDER IN EA 316/2007 IN EP 365/05 IN OS.1486/2002 of PRL.M.C.,ERNAKULAM

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PETITIONER:

M.K.VIJAYAN, S/O KRISHNAN,
MADATHIPARAMBIL HOUSE,
EDAPPALLY SOUTH VILLAGE, KANAYANNOOR TALUK,
ERNAKULAM.

BY ADV. SRI.BIJU BALAKRISHNAN

RESPONDENT:

MANICKANAMPARAMBIL TRUST,
REPRESENTED BY M.V.MATHEW, MANAGING PARTNER,
NADAKKAVU P.O., UDAYMPEROOR, ERNAKULAM DIST.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.21983 OF 2007

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Dated this the 17th day of July, 2007

JUDGMENT

This writ petition is filed to set aside Ext.P8 order. Ext.P8 order is passed on the basis of the application filed by the judgment debtor to the effect that the entire property of 6 cents need not be sold for the realisation of decree debt of Rs.1,21,372/-. According to him, the property is having an extent of 6 cents and the value of the property is Rs. 2 lakhs per cent. The trial court did not find in favour of the petitioner for the reason that the property is only 6 cents in extent and other 4 E.Ps are pending against the same judgment debtor and the very same property was attached in all these E.Ps. The approach of the court below cannot be found fault with and the decree holder is very much entitled for filing petition under Section 73 of the Code of Civil Procedure and they may resort to Section 73 C.P.C. for ratable distribution of the decree amount. The order of the Munsiff's Court does not suffer from any infirmity and therefore the writ petition cannot be entertained. Hence it is dismissed.

2. But, at the same time, if the sale is not already over, in order to

fecilitate the judgment debtor for a settlement of the case and for payment, the court below shall adjourn the sale by one month from today and if real earnestness and eagerness is also found from the conduct of the judgment debtor regarding his inclination to pay the amount, the court below is directed to extend further time to pay off the decree debt.

M.N.KRISHNAN, JUDGE

Cdp/-